

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

IN RE: ZIMMER NEXGEN KNEE
IMPLANT PRODUCTS LIABILITY
LITIGATION

MDL No. 2272

**APPROVED FORM OF
SHORT FORM COMPLAINT**

This applies to:

JURY TRIAL DEMAND

MARY E. ALEXANDER, ET AL.

Plaintiffs,

vs.

Zimmer, Inc., Zimmer Holdings, Inc.,
Zimmer Orthopaedic Surgical Products, Inc.;

Defendants.

APPROVED SHORT FORM COMPLAINT FOR

ZIMMER NEXGEN KNEE IMPLANT PRODUCTS LIABILITY LITIGATION

Plaintiffs incorporate by reference Plaintiffs' Master Long Form Complaint in In Re: Zimmer NexGen Knee Implant Products Liability Litigation, MDL 2272, filed as of January 12, 2012, as Document Number 211. Pursuant to a Stipulated Order of the PSC in MDL 2272 and Counsel for Defendants, the following Short Form Complaint is approved for use in this action. Where Plaintiff's Complaint was previously transferred into MDL 2272, this Short Form

Complaint and the incorporated Master Long Form Complaint shall serve as an amended Complaint.

Plaintiffs select and indicate by checking off the appropriate spaces, those products and claims that are specific to his or her case. Where certain claims require specific pleadings or case specific facts and individual information, plaintiffs shall add and include them herein.

1. Plaintiffs, Mary E. Alexander and Armand Banks Alexander, III, state and bring this civil action before the Court for the United States District Court for the Northern District of Illinois as a related action in the matter entitled IN RE: ZIMMER NEXGEN KNEE IMPLANT PRODUCTS LIABILITY LITIGATION, MDL No. 2272. Plaintiffs are filing this short form complaint as permitted and approved by Order of the MDL 2272 Court, and adopts and incorporates by reference those allegations in the Plaintiffs' Master Long Form Complaint and any and all amendments thereto.

2. This action is brought pursuant to 28 U.S.C. §1332, as diversity of citizenship exists among and between the parties.

3. Venue is proper under 28 U.S.C. §1391 as defendants named herein do business within this district.

4. Plaintiff, Mary E. Alexander is a resident and citizen of the State of Tennessee and claims damages as set forth below.

5. Plaintiff's Spouse Armand Banks Alexander, III is a resident and citizen of Tennessee, and claims damages as a result of loss of consortium.

6. Plaintiff, Mary E. Alexander was born on XX/XX/1945.

ALLEGATIONS AS TO DEVICE(S) AND INJURIES

7. Plaintiff, Mary E. Alexander was implanted with a Zimmer NexGen® Knee device on her right knee on or about October 23, 2006 at Summit Medical Center by Dr. Michael LaDouceur.

8. On or about October 23, 2006, Plaintiffs suffered personal and economic injuries as a result of the implantation of the following Zimmer NexGen® Knee device(s):

☒ Zimmer NexGen LPS-Flex
☐ Zimmer NexGen CR-Flex
☐ Zimmer NexGen GSF LPS-Flex
☐ Zimmer NexGen GSF CR-Flex
☒ Zimmer NexGen MIS Tibia

9. Plaintiff, Mary E. Alexander, has not yet scheduled a revision surgery with respect to the defective Zimmer NexGen® Knee device(s).

10. Plaintiff Mary E. Alexander has suffered injuries as a result of implantation of the Zimmer NexGen® Knee device(s) manufactured by defendants as described in the forthcoming Plaintiff's Fact Sheet and other responsive documents in discovery provided to the defendants and/or obtained by the defendants through Plaintiff's authorization and are incorporated by reference herein.

11. At the time of implantation with the Zimmer NexGen® Knee device(s), the plaintiffs resided at 1138 Isaac Franklin Drive, Gallatin, Tennessee 37066.

12. The defendants by their actions or inactions, proximately caused Plaintiffs' injuries.

13. Plaintiff claims damages as a result of:

☒ injury to herself/himself

☐ injury to the person represented

☐ wrongful death

☐ survivorship action

☒ economic loss

☒ loss of services

☒ loss of consortium

14. Neither Plaintiffs nor their physicians, through the exercise of reasonable diligence, could have detected the defective nature of the Zimmer NexGen® Knee device any earlier than the evidence of loosening and/or other indication for planned revision of the defective device(s), or as the facts dictate and produced in discovery.

15. As a result of the injuries Plaintiffs sustained, they are entitled to recover compensatory damages for pain and suffering and emotional distress and for economic loss as well as punitive damages.

16. Plaintiff Mary E. Alexander's Zimmer NexGen® Flex Knee device bears catalog number 5964-15-52 and lot number 6050234 and Zimmer NexGen® MIS Tibia device bears catalog number 5950-37-01 and lot number 6053867.

ALLEGATIONS AS TO DEFENDANTS
SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY

17. The following claims and allegation are asserted by Plaintiffs and are herein adopted by reference:

COUNT I – STRICT LIABILITY DESIGN DEFECT

☒ COUNT I (a) ZIMMER LPS-FLEX;

☐ COUNT I (b) ZIMMER CR-FLEX;

☐ COUNT I (c) ZIMMER GSF LPS-FLEX;

_____ COUNT I (d) ZIMMER GSF CR-FLEX;
__X__ COUNT I (e) ZIMMER MIS TIBIAL COMPONENTS;

COUNT II – STRICT LIABILITY FAILURE TO WARN

__X__ COUNT II (a) ZIMMER LPS-FLEX ;
_____ COUNT II (b) ZIMMER CR-FLEX;
_____ COUNT II (c) ZIMMER GSF LPS-FLEX;
_____ COUNT II (d) ZIMMER GSF CR-FLEX;
__X__ COUNT II (e) ZIMMER MIS TIBIAL COMPONENTS;

COUNT III – STRICT LIABILITY MANUFACTURING DEFECT

__X__ COUNT III (a) ZIMMER LPS-FLEX;
_____ COUNT III (b) ZIMMER CR-FLEX;
_____ COUNT III (c) ZIMMER GSF LPS-FLEX;
_____ COUNT III (d) ZIMMER GSF CR-FLEX;
__X__ COUNT III (e) ZIMMER MIS TIBIAL COMPONENTS;

COUNT IV - NEGLIGENCE

__X__ COUNT IV (a) ZIMMER LPS-FLEX;
_____ COUNT IV (b) ZIMMER CR-FLEX;
_____ COUNT IV (c) ZIMMER GSF LPS-FLEX;
_____ COUNT IV (d) ZIMMER GSF CR-FLEX;
__X__ COUNT IV (e) ZIMMER MIS TIBIAL COMPONENTS;

COUNT V – NEGLIGENT MISREPRESENTATION

- ☒ COUNT V (a) ZIMMER LPS-FLEX;
☐ COUNT V (b) ZIMMER CR-FLEX;
☐ COUNT V (c) ZIMMER GSF LPS-FLEX;
☐ COUNT V (d) ZIMMER GSF CR-FLEX;
☒ COUNT V (e) ZIMMER MIS TIBIAL COMPONENTS;

COUNT VI – EXPRESS WARRANTY

- ☒ COUNT VI (a) ZIMMER LPS-FLEX;
☐ COUNT VI (b) ZIMMER CR-FLEX;
☐ COUNT VI (c) ZIMMER GSF LPS-FLEX;
☐ COUNT VI (d) ZIMMER GSF CR-FLEX;
☒ COUNT VI (e) ZIMMER MIS TIBIAL COMPONENTS;

COUNT VI – BREACH OF EXPRESS WARRANTY

- ☒ COUNT VI (a) ZIMMER LPS-FLEX;
☐ COUNT VI (b) ZIMMER CR-FLEX;
☐ COUNT VI (c) ZIMMER GSF LPS-FLEX;
☐ COUNT VI (d) ZIMMER GSF CR-FLEX;
☒ COUNT VI (e) ZIMMER MIS TIBIAL COMPONENTS;

COUNT VII – BREACH OF IMPLIED WARRANTY

- ☒ COUNT VII (a) ZIMMER LPS-FLEX;
☐ COUNT VII (b) ZIMMER CR-FLEX;
☐ COUNT VII (c) ZIMMER GSF LPS-FLEX;

_____ COUNT VII (d) ZIMMER GSF CR-FLEX;
X COUNT VII (e) ZIMMER MIS TIBIAL COMPONENTS;

COUNT VIII – REDHIBITION

_____ COUNT VIII (a) ZIMMER LPS-FLEX;
_____ COUNT VIII (b) ZIMMER CR-FLEX;
_____ COUNT VIII (c) ZIMMER GSF LPS-FLEX;
_____ COUNT VIII (d) ZIMMER GSF CR-FLEX;
_____ COUNT VIII (e) ZIMMER MIS TIBIAL COMPONENTS;

X COUNT IX – LOSS OF CONSORTIUM
_____ COUNT X – WRONGFUL DEATH
_____ COUNT XI - SURVIVAL ACTION
X COUNT XII – VIOLATION OF CONSUMER PROTECTION
STATUTES:

Tenn. Code Ann. § 47-18-109.

X COUNT XIII – UNJUST ENRICHMENT
X COUNT XIV – PUNITIVE DAMAGES

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. For compensatory damages requested and according to proof;
2. For punitive or exemplary damages against Defendants;
3. For all applicable statutory damages of the state whose laws will govern this action;
4. For an award of attorney's fees and costs;

5. For prejudgment interest and the costs of suit; and
6. For such other and further relief as this Court may deem just and proper;

JURY DEMAND

Plaintiffs hereby demand a trial by jury as to all claims in this action.

Dated: March 28, 2012.

Respectfully submitted,

/s/ Sheila M. Bossier
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CERTIFICATE OF SERVICE

I certify that on March 28, 2012, a copy of the foregoing *Plaintiffs' Short Form Complaint For Zimmer Nexgen Knee Implant Products Liability Litigation* was served, pursuant to waiver of service of summons process, F.R.C.P. 4(d) upon:

Peter Meyer
BAKER & DANIELS LLP
Suite 800
111 E. Wayne Street
Fort Wayne, IN 46802

/s/ Sheila M. Bossier

Sheila M. Bossier